



## State of Utah

### Department of Natural Resources

MICHAEL R. STYLER  
*Executive Director*

### Division of Oil, Gas & Mining

JOHN R. BAZA  
*Division Director*

JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

June 2, 2006

CERTIFIED RETURN RECEIPT  
7004 2510 0004 1824 3762

Mr. Tracy Burnham  
Decorative Landscaping  
3231 North Millcreek Road  
Pleasant Grove, Utah 84062

Subject: Proposed Assessment for State Cessation Order No. MC-06-03-03-01,  
T & M Holdings (M/035/023), Salt Lake County, Utah

Dear Mr. Burnham:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. This is only a "proposed" assessment and the final assessment will be sent to you after the abatement requirements of the violation have been completed and the violation has been terminated. The cessation order was issued by Division Inspector, Paul Baker, on May 4, 2006. Rule R647-7-103 et. seq. has been utilized to formulate the proposed penalty for the violation as follows:

- MC-06-03-03-01- Violation 1 of 1 \$1870

The enclosed worksheet specifically outlines how the violation was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Cessation Order has been considered in determining the facts surrounding the violation and the amount of penalty. If the violation has not been abated at the time of the proposed assessment, the assignment of good faith points cannot be made. If you feel that you are eligible for good faith, you should supply relevant information to the assessment officer within 15 days of the violation abatement date so that it can be factored into the final assessment.



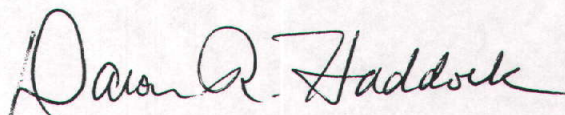
Tracy Burnham  
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Otherwise, under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director, Associate Director or appointed Conference Officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.
2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the proposed assessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock  
Assessment Officer







2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. While the Operator has a small mine permit, he has expanded the area of disturbance to beyond the 5 acres that are allowed under that permit. Some acres have been disturbed at this location without having obtained approval to do so. Disturbance has actually occurred, thus assignment of 20 points.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 4

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator had disturbed about 2-2.5 acres of land that was outside of the approved permit area. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was observed nor was there any injury to the public. The damage is probably temporary and the site should be readily reclaimable. The soil resources have not been lost but have been replaced on the surface as excavation proceeded. Most vegetation has been removed from the mining area, but the site matches surrounding topography and will require little/no grading. Damage is considered minimal and points are assigned in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?                       
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

**PROVIDE AN EXPLANATION OF POINTS:**



\*\*\*

TOTAL SERIOUSNESS POINTS (A or B) 24

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

\*\*\* *The Operator was cited for a similar violation in March of 2005. At that time the operator was not aware of the need for a permit from DOGM for this operation. They did secure a permit and were operating in the boundary of a small mine 5 acre area. They should have known that they needed to stay within the small mine boundary, but for some reason they chose to mine outside of the boundary. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to stay within the boundary of a permit. The Operator is considered negligent because they were not careful to stay within the permit boundary and they mined more acreage than what was allowed under their current NOI. Points are assigned in the middle of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20\*  
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10  
(Permittee used diligence to abate the violation)



- Normal Compliance 0  
(Operator complied within the abatement period required)  
(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20\*  
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10\*  
(Operator complied within the abatement period required)
- Extended Compliance 0  
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)  
(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_

ASSIGN GOOD FAITH POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The abatement has not yet been completed, so good faith points cannot be awarded at this time. This category will be looked at again after the abatement has been completed. Points will be awarded depending on how quickly the abatement is met.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION # <u>MC-06-03-03-01</u>	
I. TOTAL HISTORY POINTS	<u>5</u>
II. TOTAL SERIOUSNESS POINTS	<u>24</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>          </u>
TOTAL ASSESSED POINTS	<u>37</u>
TOTAL ASSESSED FINE	<u>\$ 1870</u>